

**United States Bankruptcy Appellate Panel
FOR THE EIGHTH CIRCUIT**

No. 98-6033EM

In re:	*
	*
Bailey & Associates, Inc.,	*
	*
Debtor.	*
	*
Bailey & Associates, Inc.,	*
	*
Plaintiff/Appellee,	*
	*
v.	* Appeal from the United States
	* Bankruptcy Court for the
	* Eastern District of Missouri.
Daryl M. Ray and	*
Theola S. Olion-Ray,	* [UNPUBLISHED]
	*
Defendants/Appellants.	*

Submitted: June 15, 1998
Filed: June 22, 1998

Before KRESSEL, SCOTT and DREHER, Bankruptcy Judges.

KRESSEL, Bankruptcy Judge.

The defendants in this adversary proceeding appealed the bankruptcy court's entry of a default judgment against them. Prior to filing their notice of appeal, the defendants also filed a request with the bankruptcy court to vacate its default judgment. The request alleges the plaintiff's attorney's promise to call them at the time of trial so that they could participate

by telephone, but that no such call was placed. The bankruptcy court has not yet ruled on their request.

After the defendants filed their brief, the plaintiff's attorney filed a letter with this court conceding that he had made such a promise, but failed to follow through and conceding that the motion for relief from the default judgment should be granted. It is the bankruptcy court that should rule on the appellants' motion.¹

CONCLUSION

We therefore remand this proceeding to the bankruptcy court so that it may dispose of the appellants' motion for relief from the default judgment.

A true copy.

Attest:

CLERK, U.S. BANKRUPTCY APPELLATE PANEL FOR THE
EIGHTH CIRCUIT.

¹ We note that the appellants' time to appeal from the default judgment is tolled for ten days after the disposition of the appellants' motion. Fed. R. Bankr. P. 8002(b).